IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

**O R D E R**

Jamaldin & Anr. Vs. State of Rajasthan

**S.B.CR.REVISION PETITION NO.139/1991**

against the judgment dt.8.8.1991 passed by Additional Sessions Judge No.1, Jodhpur in Cr.Appeal No.10/89.

DATE OF ORDER :: April 26, 2006.

**HON'BLE MR.H.R.PANWAR,J.**

Mr.B.K.Mehar, for the petitioners.
Mr.J.P.S.Choudhary, Public Prosecutor.

**BY THE COURT:**

By the instant criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code` hereinafter), the petitioners have challenged the judgment and order dt. 08.8.1991 passed by Additional Sessions Judge No.1, Jodhpur (for short `the appellate court` hereinafter) in criminal appeal No.10/89, whereby the appellate court dismissed the appeal filed by the petitioners against the judgment and order dt. 2.3.1989 passed by Judicial Magistrate, Phalodi (for short `the trial court' hereinafter) in criminal case No.170/83 and the conviction and sentence awarded by the trial court were

affirmed.

The trial court by judgment and order dt. 2.3.1989, convicted the petitioners for the offence under section 9/51 of The Wild Life (Protection) Act, 1972 (for short `the Act' hereinafter) and sentenced each of them to undergo six months' rigorous imprisonment and fine of Rs.500/- each, in default of payment of fine further to undergo one month's simple imprisonment.

I have heard learned counsel for the petitioners and Public Prosecutor for the State. Perused the judgments and orders of the appellate court as also of the trial court. Carefully gone through the record of the trial court.

PW.1 Jora Ram lodged a first information report Ex.P/1 on 28.3.1983 at Police Station, Baap, Tehsil Phalodi alleging therein that on a camel cart, petitioners and Janu Khan, Bachchu Khan, Kamre Khan etc. having guns were seen in the area of village Kalyan Singh-ki-Seed. It is alleged that five persons by surrounding a deer, who was sitting under a “kair” tree, fired gunshots. Thereafter, he called Harji Ram, Birbal, Bagta Ram, Bhajna Ram, Bhura Ram, Jodha Ram, Barsingha Ram etc. and then all of them chased the persons, who were armed with guns

on the camel cart, however, they could not be apprehended. Janu Khan threated to kill them, if they come near. Thereafter, it is alleged that Bachchu Khan cut the neck of the deer, tied it with a tat and took away towards village Baap on the camel cart. It appears that the corpse of the deer was recovered from Bachchu Khan vide Ex.P/3. During the pendency of the criminal case, Bachchu Khan expired. Janu Khan, Kamre Khan, Mehmood Khan etc. were not challaned. During the pendency of the case, the prosecution witnesses PW.2 Jodha Ram, PW.3 Birbal Ram, PW.4 Harjiram, PW.5 Bhura Ram, PW.7 Kesra Ram, PW.8 Barsingha Ram, PW.9 Banshi Ram and PW.10 Bhajna Ram did not support the prosecution case and turned hostile. A compromise was also filed by complainant PW.1 Jora Ram compounding the offence under section 447 I.P.C., which was accepted by the trial court and the petitioners have been acquitted of the offence under section 447 I.P.C. The witness stated that the parties have compromised the matter. The case solely rests on the statement of PW.1 Jora Ram, who stated that accused-persons were not known to him previously. No identification parade was conducted. From the statement of PW.1, it is clear that the petitioners were not known to PW.1 prior to the occurrence even the villages of the petitioners and that of the PW.1 are at the distance of 3-4 Kaus means about 6-7 kms. and earlier to this occasion, PW.1 had no occasion to

meet the present petitioners or to know about them as both belong to different communities. PW.1 himself admitted that the matter has been compromised. The allegation against the petitioner No.1 Jamaldin is that he was armed with a gun, however no gun was recovered from him. There is no specific allegation against petitioner No.2 except that he was one of the persons on camel cart but has not been identified by the witness. Thus, there is no cogent and convincing evidence connecting the petitioners in commission of crime and more particularly the witnesses have not supported the prosecution case may be because the parties have compounded the offence under section 447 I.P.C., which is compoundable and the offence under section 9/51 of the Act not being compoundable, could be not compounded .

On close scrutiny of the statements of the witnesses, in my view both the courts below fell in error in not appreciating the evidence of PW.1 in right perspective, who in clear terms has stated that the petitioners were not known to him and it was the first occasion to see them. He has witnessed the occurrence from far distance. In my view the identity of the petitioners cannot be said to have been established beyond reasonable doubt keeping in view the infirmity in the evidence of the prosecution witnesses. In the circumstances, therefore, the conviction of the

petitioners cannot be sustained and is liable to be set aside.

Consequently, the revision petition is allowed. Judgments and orders of the trial court dt. 2.3.1989 as well as of the appellate court dt. 8.8.1991 affirming the order of the trial court are set aside. The petitioners are acquitted of the charges under section 9/51 of the Act. They are on bail, their bail bonds stand cancelled.

[H.R.PANWAR],J.

m.asif/-